

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

SHERRY LENNETTE JOHNSON

PLAINTIFF

VS.

CIVIL NO. 1:95CV182-JAD

JOHNSTON TOMBIGBEE FURNITURE
MANUFACTURING COMPANY

DEFENDANT

MEMORANDUM OPINION

Defendant employer has moved for summary judgment in this Title VII case alleging sexual harassment of plaintiff by a fellow employee. After review of the briefs and documents submitted by the parties, the court concludes that the motion is well taken and should be **granted**.

Sherry Johnson was hired on August 15, 1994, at the Prairie, Mississippi, Johnston-Tombigbee Furniture Manufacturing Company (JTF). On August 23, 1994, David Holliday, an employee of JTF, approached plaintiff and made provocative racial and sexual statements to her. Prior to this date, Johnson had never reported any problems with Holliday, although she testified that he had put his arm around her previously. In her own words, the incident went as follows:

I was working and he come over where I was and put his arm around me. I said, "Man, you know, go on and leave me alone." So, he kept on. And he looked and he says, "You are not all black, are you?" I said, "Man, what has that got to do with anything?" you know. And he told me, he said, "I can tell you are high

yellow, your mama is white." I said, "Now, that is not none of your concern." And I kept working. And he stood up in front of me and he says, "You know, you are an evil ass bitch," excuse my language. And he slapped me. And before I could think, I slapped him back. And then at that time, he said he could have me fired. And when he slapped me, he said, "Are you going to cry?" I said, "No, I am not going to cry." And then when it happened, I went to report it. (Johnson deposition, pp.20-21)

Johnson immediately reported this exchange to Jimmy Forrest, the supervisor, who, in turn, notified Bob Honsinger, Acting Plant Manager. That same day, Holliday, Johnson, Forrest and Honsinger met to discuss the incident. Honsinger's notes of the meeting state:

There was an accusation that David Holliday and Sherry Johnson had exchanged blows. Sherry Johnson also said that David Holliday (a black male) had asked Sherry Johnson (a black female) if she was part white.

The company rules concerning fighting were explained to both Holliday and Johnson, which states both employees would automatically be terminated for fighting.... After hearing that no one saw the incident I instructed Jimmy Forrest to write up David Holliday as verbal warning for sexual harassment. Holliday and Johnson were both warned about physical blows to co-workers and sexual or racial comments to each other or other co-workers.

After the meeting, Honsinger interviewed two witnesses who said they heard the parties arguing but did not hear any specific remarks or hear or see any blows exchanged.

Holliday was reprimanded for "horseplay." Johnson received no reprimand, but asked not to be placed in a work area with Holliday. The request was denied. Johnson left work and returned two days later with a doctor's excuse. When she realized she would indeed continue working with Holliday, she quit.

Plaintiff believes that she has demonstrated a viable claim of hostile work environment under 42 U.S.C. §2000e2(a)1. Under such a claim,

... plaintiff must demonstrate that the employer had actual or constructive knowledge of the existence of a sexually hostile working environment and took no prompt and adequate remedial action. (Citations omitted.) The plaintiff may do this by proving that complaints about the harassment were lodged with the employer or that the harassment was so pervasive that employer awareness may be inferred.

Katz v. Dole, 709 F.2d 251, 255 (4th Cir. 1983).

Plaintiff offers no evidence that the company had prior knowledge of a problem of sexual harassment by Holliday. Johnson admits she never put the company on notice prior to August 23.

Johnson argues that a reprimand to Holliday for "horseplay" and putting her back on the line with Holliday was not appropriate remedial action reasonably calculated to end the harassment. Honsinger testified that because the witnesses could not confirm what took place and the two parties involved were throwing accusations back and forth, the incident appeared to be similar to two children fighting.

Honsinger did not place Johnson in another job, first, he says, because Johnson was a new employee and there was no other position open where she could handle the work, and second, he felt it important for employees to work out their differences.

Johnson did not remain on the job long enough to find out if the action taken was remedial or not. She quit when she did not get her way about moving to another position.

The court finds that the action taken was appropriate to the circumstances and that no claim of sexual harassment on the part of Johnston-Tombigbee will lie. Accordingly, summary judgment is granted for the defendant.

A separate order in accordance with this opinion will be entered.

THIS _____ day of October, 1996.

UNITED STATES MAGISTRATE JUDGE